

DEC 16 2008

BEFORE THE BOARD OF CHIROPRACTIC PHYSICIANS

URANGA & URANGA

STATE OF IDAHO

In the Matter of the License of:

GERHARD M. ELLESTAD, D.C.,
License No. CHIA-404,

Respondent.

)
) Case No. CHI-2005-8
)
) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW AND**
) **RECOMMENDED ORDER**
)

Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

FINDINGS OF FACT

1. Gerhard M. Ellestad, D.C. (hereinafter "Respondent") is licensed by the Idaho State Board of Chiropractic Physicians (hereinafter "Board") under License No. CHIA-404 to engage in the practice of chiropractic.

2. On October 28, 2008, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on October 28, 2008, by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail. The mailings were addressed to Respondent at his most recent known address on file with the Board, as follows:

Gerhard M. Ellestad, D.C.
216 NE Main
Lewistown, MT 59457

4. The certified mail return receipt indicates that the copy of the Complaint sent by certified mail was received at Respondent's address on November 1, 2008. In

addition, the envelope containing a copy of the Complaint which was sent to Respondent by regular mail was not returned to the sending office.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's license without the necessity of conducting a hearing.

6. On Dec 16, 2008, a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

Gerhard M. Ellestad, D.C.
216 NE Main
Lewistown, MT 59457

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint:

a. In May 2005, a complaint was filed with the Board alleging that Respondent claimed to have diagnosed cancer in patients and treated those patients to wellness.

b. Respondent subsequently informed an investigator with the Bureau of Occupational Licenses that:

i. He treats cancer patients with nutrition and diet (15%), by working with the nerves (70%), and by counseling the patients.

ii. One patient had cancer in her brain, both kidneys, both lungs and her digestive tract. Respondent treated her three times a day for eight days and she was well.

iii. Sometimes a patient presents to him with a prior diagnosis of cancer. Other times he diagnoses the cancer. Respondent does not use x-rays to do this, as he believes they cause cancer; rather, he uses applied kinesiology. Respondent also uses the following methods to find cancer: A test performed with hydrogen peroxide—if the body is weak with cancer, the peroxide reacts in a specific manner; reflexes under the chin when the finger is run down them; a test with a piece of wood; a test involving the sternum clyoide mastoid muscle; and a test involving stainless steel.

iv. Respondent's favorite test is the hydrogen peroxide test. He does not believe the stainless steel test works very well.

v. For any patient's first time on his table, Respondent will run them through a series of tests, always checking for cancer. Using applied kinesiology, he determines what organ he will treat that particular day. Respondent generally picks no more than two organs to treat at a time, as treating more would be too hard on the patient.

vi. Cancer is a virus, and that his cancer patients become well 90% of the time. He estimates having treated approximately 60 cancer patients to wellness.

vii. He has pulled seven of his ten ALS (Lou Gehrig's disease) patients back to health.

c. The investigator was unable to obtain Respondent's records, which Respondent states have been destroyed.

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CONCLUSIONS OF LAW

1. As a licensed chiropractor in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 7, Idaho Code.

2. The Complaint was sent to Respondent at the most recent address on file with the Board. Respondent was duly and lawfully given notice of proceedings against his license pursuant to the provisions of IDAPA 04.11.01.055.

3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved or admitted at a hearing.

4. Respondent's acts as described in the Complaint constitute grounds for discipline against Respondent's license to practice chiropractic under the laws governing the practice of chiropractic in the State of Idaho, specifically:

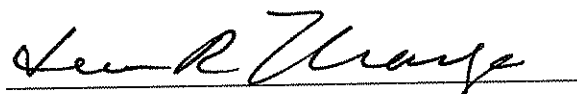
a. Idaho Code § 54-712(10) (chiropractors shall not engage in any conduct which constitutes exploitation of a patient arising out of the trust and confidence placed in the chiropractor by the patient); and

b. Idaho Code § 54-712(14) (chiropractors shall not promote unnecessary or inefficacious treatment, procedures, devices or services or practice in an incompetent or negligent manner resulting in or creating an unreasonable risk of harm).

ORDER

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

DATED this 31 day of December, 2008.


Jean R. Uranga
Hearing Officer

NOTICE OF DUE PROCESS RIGHTS

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

CERTIFICATE OF SERVICE

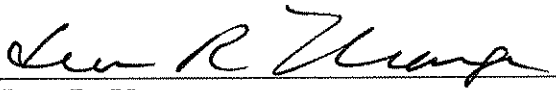
I HEREBY CERTIFY that on this 31st day of Dec, 20 08, I caused to be served a true and correct copy of the foregoing by the following method to:

Gerhard M. Ellestad, D.C.
Trail Inn Motel
216 NE Main
Lewistown, MT 59457

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail

Karl T. Klein
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☐ Statehouse Mail



Jean R. Uranga
Hearing Officer